

GOODMAN & JACOBS LLP

**MEMO ENDORSED**

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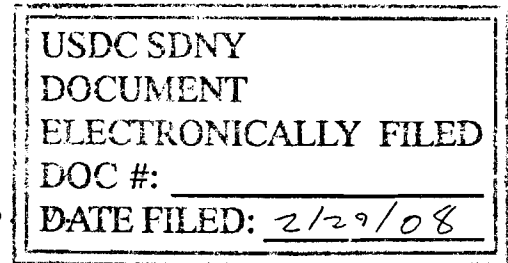
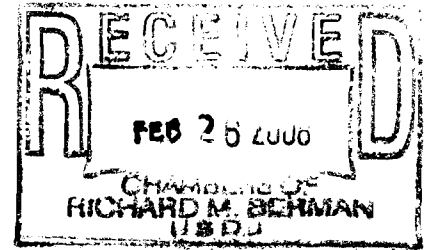
FAX: (212) 385-1770 (not for service)

February 26, 2008

BY HAND

The Honorable Richard M. Berman  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 650  
New York, New York 10007-1312

Re: Great American Insurance Co.  
Martin L. Solomon, et al.  
07-CV-6498 (S.D.N.Y.) (RMB)  
Our File No.: 13-096



Dear Judge Berman:

We represent Kingsway Financial Services, Inc. and American Country Holdings, Inc. (the "Kingsway defendants") in the above-referenced Interpleader action.

Pursuant to your rules, we ask the Court's permission to move to dismiss the Interpleader action. Despite repeated attempts by the Court, the parties in the Related Action have been unable to reach a settlement. On February 25, 2008, the parties again advised Magistrate Judge Pitman that no further settlement discussions are contemplated.

There is now no basis for the Interpleader action to continue. Great American Insurance Company's ("Great American") stated principal reason for commencing the Interpleader action was that "certain of the Insured Persons are contemplating another settlement demand" and that "any payment by Great American on behalf of any Insured Person that exhausts the remaining Limit of Liability and leaves no funds available for any non-settling Insured Person(s) or Kingsway exposes Great American to multiple claims and liability." See Complaint ¶¶ 22-23. That reason no longer exists.

The Kingsway defendants will in a motion, if allowed, ask the Court to permit the Counterclaim alleging Great American's failure to settle in good faith to proceed. Had Great American considered its insureds interests along with its own the Related Action would have settled several years ago for \$8.5 million or less and saved the enormous defense costs that have continued to erode the policy.

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Great American's own actions in failing to negotiate in good faith make its claim that it is a "mere disinterested stakeholder" disingenuous. The policy will continue to be eroded by defense costs based on Great American's failure to negotiate in good faith. American Country, the "Insured Entity," which purchased the Great American policy to provide for its "peace of mind for the insured . . . and prompt payment of the policy proceeds upon submission of a valid claim" (Bi-Economy Market, Inc. v. Harleystown Ins. Co., 2008 WL 423451, 2008 slip op. 01418 at 3 (N.Y. Feb. 19, 2008). (citations omitted)) will incur millions of dollars in damages to honor indemnification agreements.

Although the Interpleader action was premature and is now moot, the Counterclaim is timely, proper and should be allowed to proceed.

Thank you for your courtesy.

Respectfully,

  
Sue C. Jacobs

**Application Denied**  
So Ordered: **See memo endorsement**  
**RMB** **dated 2/28/08**

Richard M. Berman, U.S.D.J.

cc: Honorable Judge Henry Pitman - By Hand  
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